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CASE NO. 84-1161

In The Supreme Court Of The United States

OCTOBER TERM, 1984

LATRELLE CAMPBELL,

PETITIONER

v.

PIERCE COUNTY, GEORGIA, ET AL,

RESPONDENTS

BRIEF OF RESPONDENTS IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

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TO: THE HONORABLE CHIEF JUSTICE AND THE HONORABLE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

The Respondents, Pierce County, Georgia, et al, assert that Petitioner's application for a writ of certiorari should be denied as there are no special and/or important reasons as enumerated

in Rule 17 of the Rules of the Supreme Court of the United States for such to be granted.

OPINIONS BELOW

The Petitioner has provided copies of the opinions below in an appendix to her brief. See A-2 through A-19 for the opinion of the United States Court of Appeals for the Eleventh Circuit published at 741 F.2d 1342 (11th Cir. 1984) and A-20 through A-37 for the unpublished opinion of the United States District Court for the Southern District of Georgia.

JURISDICTION

The judgment of the Court of Appeals was entered on September 18, 1984. Petitioner's motion for rehearing was denied by the Court of Appeals on October 24, 1984. While the petition

for a writ of certiorari is timely, Respondents strongly urge this Court in its sound judicial discretion to deny a review of the opinion of the United States Court of Appeals for the Eleventh Circuit on a writ of certiorari insomuch as that ruling fails to qualify under the considerations governing review on certiorari enumerated in Rule 17 of the Rules of the Supreme Court of the United States.

QUESTION PRESENTED

Whether the Eleventh Circuit Court of Appeals in affirming the District Court's ruling as a matter of law that Petitioner's liberty interest claim, Petitioner having conceded that she has no property interest in her continued employment, entitles her solely to an adequate due process hearing in order to

"clear her name", ruled in conflict with any standing United States Supreme Court decisions or Federal Court of Appeals rulings so as to warrant a grant of certiorari by the Supreme Court of the United States.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the Due Process Clause of the Fourteenth Amendment of the United States Constitution.

STATEMENT OF THE CASE

Petitioner filed her complaint under 42 U.S.C. §1983 and the Fifth and Fourteenth Amendments to the United States Constitution alleging that due to the actions of Respondents she had been deprived of liberty and property without due process of law, defamed and otherwise damaged. Respondents answered

denying these allegations. In her portion of the Pre-trial Order Petitioner withdrew her claim for violation of property interests. Respondents then filed a Motion For Summary Judgment attaching copies of the letters of notice and the transcript of the name-clearing hearing provided Petitioner. The Motion was granted and Respondents dismissed by order and judgment of the District Court on September 30, 1983. Petitioner appealed to the United States Court of Appeals for the Eleventh Circuit which on September 18, 1984, affirmed the District Court's judgment and denied the Petition for Rehearing on October 24, 1984.

On January 5, 1982, Mrs. Campbell was dismissed from employment by Respondent, Pierce County. Petitioner was

provided both oral and written notification of her dismissal on that date. A second letter enumerating the reasons for her discharge was also dated on January 5, 1982. The letter stated that Mrs. Campbell was being dismissed for:

"1. Insubordination to Clerk and County Commissioners.

2. Disrespect to Clerk and County Commissioners.

3. Misappropriation of County Funds - insurance premium payments.

4. Implementing policies that do not conform to good business practices.

5. Complaints from several persons dealing with the County Commissioners' office."

On January 8, 1982, Mrs. Campbell was notified that a formal hearing, as requested by her counsel, would be provided on January 21, 1982. On January 21, 1982, Petitioner received a

formal hearing which afforded her all of her due process rights. She had been provided with adequate notice of the hearing and the reasons for her dismissal. She was provided an opportunity to be represented by counsel, and an opportunity to present and cross-examine the witnesses. Mrs. Campbell did, in fact, obtain an attorney the very day she was discharged and was represented from that day on and at said hearing by her attorney who did present and cross-examine witnesses on her behalf. At said hearing, Petitioner was given the opportunity to hear all of the reasons for her discharge substantiated and the opportunity to fully clear her name. After hearing the testimony of all the witnesses, the Board of Commissioners affirmed its previous decision

to dismiss Mrs. Campbell. If any of Petitioner's "liberty" interests had been previously violated, such violations were cured by this hearing. Further, Petitioner, in the pre-trial order, conceded her total lack of a property interest in her employment by withdrawing such claim and further stated that she made no pendant state tort claims.

SUMMARY OF ARGUMENT

Petitioner having received both oral and written notification of her dismissal and a letter dated the day of her discharge enumerating the reasons for her discharge as well as a name-clearing hearing provided on January 21, 1982, all due process requirements have been satisfied. Where only an individual's liberty interests

have been violated, such violations are cured by a proper due process hearing which permits an individual to clear her name, and this is the sole remedy available. Codd v. Velgar, 429 U.S. 624, 627, 97 S.Ct. 882, 883-4, 51 L.Ed.2d 92, 95-6 (1977). The decision by the Eleventh Circuit Court of Appeals that no damages are available to Petitioner for violation of her liberty interests since the process and the timing of the hearing provided Petitioner were adequate is clearly correct and consistent with all authoritative decisions by the Supreme Court and by other federal courts of appeals. Codd v. Velgar, supra; In re Selcraig, 705 F.2d 789, 796 (5th Cir. 1983); White v. Thomas, 660 F.2d 680, 685 (1981) cert. denied 455 U.S. 1027, 102 S.Ct. 1731;

Glenn v. Newman, 614 F.2d 467, 472 (5th Cir. 1980); Dennis v. S & S Consolidated Rural H.S. Dist., 577 F.2d 338, 344 (5th Cir. 1978).

ARGUMENT AND CITATION

OF AUTHORITY

The District Court and Court of Appeals for the Eleventh Circuit properly found under F.R.C.P. 56(b) that Respondents were entitled to summary judgment as a matter of law there being no genuine issue as to any material fact remaining after a review of the pleadings, depositions, answers to interrogatories, letters of notice provided plaintiff, and the transcript of the name-clearing hearing provided Petitioner.

In her portion of the pre-trial order entered by the District Court, in

her appeal to the Eleventh Circuit and in her petition for writ of certiorari to this Court, Petitioner has consistently defined her claim as one solely for monetary damages which she alleges are recoverable under 42 U.S.C. §1983 for a deprivation of her liberty interest and reputation without due process under the Fifth and Fourteenth Amendments to the United States Constitution when she was dismissed from employment by defendant, Pierce County. Petitioner was not defamed by Respondent, Larry Thomas', letter dated January 5, 1982, which enumerates the reasons for her discharge as this letter was a private communication and was not made public by Pierce County, or any other named Respondents. See Bishop v. Wood, 426

U.S. 341, 348, 96 S.Ct. 2074, 2979, 48 L.Ed.2d 684 (1976).

Yet, even assuming arguendo that Respondents did in some manner defame the Petitioner in conjunction with her dismissal, the federal tort is not the defamation but is the denial of a hearing at which the dismissed employee had an opportunity to refute the public charge. Paul v. Davis, 424 U.S. 693, 712, 96 S.Ct. 1155, 1165-6, 47 L.Ed.2d 405 (1976); Board of Regents v. Roth, 408 U.S. 564, 573, 92 S.Ct. 2701, 33 L.Ed.2d 548 (1972).

> "The truth or falsity of the City Manager's statement determine whether or not his decision to discharge petitioner was correct or prudent, but neither enhances nor diminishes petitioner's claim that his constitutionally protected liberty interest has been impaired."

Bishop v. Wood, 426 U.S. at 348, 96 S.Ct. at 1079-80.

I.

THE DECISION THAT THE PROCESS PROVIDED AND THE TIMING OF THE HEARING WERE ADEQUATE IS CLEARLY CORRECT AND THERE IS NO CONFLICT OF DECISION.

The decision by the Eleventh Circuit Court of Appeals limiting Petitioner's remedy to a name-clearing hearing is consistent with all authoritative decisions by the Supreme Court and by other Federal Courts of Appeals. On her appeal to the Eleventh Circuit and in her petition to this Court, Petitioner seems to attempt to stand on language she quotes from Wisconsin v. Constantineau, 400 U.S. 433, 437, 91 S.Ct. 507, 27 L.Ed.2d 515 (1971), a case which involves a state statute pursuant

to which the Petitioner was stigmatized, his name being posted in retail liquor outlets as one to whom intoxicating beverages should not be sold, as establishing a right to be heard before a discharge. The language Petitioner relies on is quoted in Constantineau, from Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 123, 168, 71 S.Ct. 624, 646, 95 L.Ed. 817 (1950), a case involving a person's right to an opportunity to be heard before deportation from this country. Petitioner then attempts to bolster her position by citing Roth, supra. Yet Roth says nothing about a prior hearing stating that:

> "The purpose of such notice and hearing is to provide the person an opportunity to clear his name." Roth, supra at 573, n. 12.

Further, it has been observed that the more recent decisions by this Honorable Court entered in Paul v. Davis, supra, and Codd v. Velgar, supra:

> "[b]oth necessarily imply that the Fourteenth Amendment provides only procedural protection against injury inflicted by state officers to the interest state employees have in their reputation." In re Selcraig, 705 F.2d 789, 796 (5th Cir. 1983).

Selcraig involved a 1983 suit brought by a discharged school official who sought damages alleging the publicizing of false and stigmatizing charges and a failure to afford a name-clearing hearing. The Selcraig court held that:

> "'[T]he remedy mandated by the due process clause of the Fourteenth Amendment is 'an opportunity to refute the [stigmatizing] 'charge.' ' Codd v. Velgar, 429 U.S. 624, 627, 97 S.Ct. 882,

> 883-884, 51 L.Ed.2d 92, 95-96 (1977)." Id.; see Dennis v. S & S Consolidated Rural H.S. Dist., 577 F.2d 338, 344 (5th Cir. 1978).

This Court has recently denied certiorari in another Fifth Circuit case which has followed this same line of reasoning. In White v. Thomas, 660 F.2d 680 (5th Cir. 1981) cert. denied 455 U.S. 1027, 102 S.Ct. 1731, a case which presented questions similar to those at issue below, a deputy sheriff was fired when it was discovered that he lied in answering a direct question on his employment application regarding prior arrests. In White, plaintiff alleged that defendant sheriff had distributed a press release concerning his discharge and given an interview to journalists which created a false and defamatory impression. After determining that the

plaintiff lacked any property interest in continued employment, the court went on to remand the case to the District Court for further proceedings concerning a name-clearing hearing, but stated that it did not foreclose the possibility of a summary judgment.

In addition, the White court opined that:

> "If White would have been fired once the juvenile incident had been uncovered, absent the allegation that he lied in failing to disclose the incident on his employment application, then his dismissal may not be challenged even though he may have been deprived of a liberty interest without due process of law by the allegation that he lied. [Cites.]" Id. at 685. The Court further stated that:
>
> "Although White is entitled to a hearing to attempt to clear his name

> of the charge that he lied on his employment application he is not entitled to any section 1983 relief because of deprivation of a liberty interest." Id. (Emphasis added).

Matthews v. Eldridge, 424 U.S. 319, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976), is cited by Petitioner with the contention that it establishes a balancing test which would preponderate in this case for a pretermination hearing. However, Eldridge involves the statutorily created property interest an individual has in the continued receipt of social security benefits and the court held even so that an evidentiary hearing was not required prior to termination of social security disability benefits.

Even since before its rulings in Selcraig and White and over the past nine years, the Fifth Circuit has

consistently and appropriately interpreted and applied the decisions of this Honorable Court to limit the remedy for violations of solely liberty interests to a "name-clearing hearing". In Glenn v. Newman, 614 F.2d 467, 472 (5th Cir. 1980), the Fifth Circuit reviewed the procedure it had outlined for compliance with due process requirements. The Glenn court held that although the pretermination procedures afforded plaintiff, a former city police officer, did not conform with its previously enumerated due process requirements, any error involved was cured in the subsequent public hearing. Id. citing Blair v. Robstown Independent School District, 556 F.2d 1331, 1334-5 (5th Cir. 1977); Thurston v. Dekle, 531 F.2d 1264, 1269 (5th Cir. 1976) vacated on other

grounds, 438 U.S. 901, 98 S.Ct. 3118, 57 L.Ed.2d 1144, on remand 578 F.2d 1167. A distinguishing feature in Glenn, however, is that there the plaintiff was found to possess a property interest in his continued employment and therefore received back pay for the time period between his discharge and the date of his post-termination hearing.

Petitioner cites Boddie v. Connecticut, 401 U.S. 371, 378-379, 91 S.Ct. 780, 28 L.Ed.2d 113 (1970), and Vanelli v. Reynolds School Dist. No. 7, 667 F.2d 773, 778, n. 8 (9th Cir. 1982), and Simineo v. School Dist. No. 16, 594 F.2d 1353 (10th Cir. 1979), cases which involved a property interest and those courts required a pretermination hearing for that reason. Petitioner also cites

Rodriguez de Quinonez v. Perez, 596 F.2d 486 (1st Cir. 1979), a first circuit case where the government issued a defamatory press release without a sufficient basis to determine the accuracy of the charges of dishonesty, a factor not involved in this case and found by the district court to be a distinguishing one.

Petitioner quotes certain language from Withro v. Larkin, 421 U.S. 35, 95 S.Ct. 1456, 43 L.Ed.2d 712 (1975), as authority for an impartial tribunal and yet that case involved the liberty and property rights of a licensed physician to continue to practice and the authority cited by the court following the quoted language relates to tribunals who have pecuniary interests in the outcome of their decision. The possibility that

there existed some partiality or personal animosity among those presiding over the hearing lacks significance in light of the purpose of the name-clearing hearing which is to allow plaintiff an opportunity to expose any animosity or partiality. See Roth, supra at 573, n. 12; Selcraig, supra at 796; Dennis, supra at 344. As noted by the district court due process requires no more. Additionally, the holding of the Court of Appeals, does not as Petitioner contends, fail to require that a tribunal repudiate charges fairly shown to be false. Finally, the hearing itself disclosed in the case sub judice that a rational basis existed for Petitioner's dismissal.

II.

THE DECISION THAT NO DAMAGES REMEDY IS AVAILABLE WHERE SOLELY LIBERTY INTERESTS HAVE BEEN VIOLATED IS CLEARLY CORRECT AND THERE IS NO CONFLICT OF DECISION.

Petitioner cites Carey v. Piphus, 435 U.S. 247, 98 S.Ct. 1042, 55 L.Ed.2d 252 (1978), in support of her position that damages are available where the sole violation has been of a liberty interest; yet, the authority this Court cites in its support seems to imply the existence of an underlying property interest:

> "...Even if they did not suffer any other actual injury the fact remains that they were deprived of their right to procedural due process. 'It is enought to invoke the procedural safeguards of the Fourteenth Amendment that a significant property interest is at stake, whatever the ultimate outcome of a

> hearing...[Cits.].' " Id. at 266.

In additional support of her assertion that a damages remedy is available where the plaintiff suffers only liberty interest violations, Petitioner quotes broad language from Owen v. City of Independence, Missouri, 445 U.S. 622, 100 S.Ct. 1398, 63 L.Ed.2d 673 (1980). The quoted language, however, was written in relation to the concept of extensive governmental immunity for all "good faith" constitutional violations and does not create a new damages remedy for constitutional violations where solely a liberty interest is involved. This Court's holding in Owen is more restricted than Petitioner suggests and seems simply to establish that damages are now recoverable from municipalities which were

formerly held to be protected under the doctrine of sovereign immunity.

This becomes more clearly evident as the subsequent proceedings in Owen are traced. On remand, the Eighth Circuit stated that it remanded the action to the district court "for further proceedings consistent with...the opinion of the Supreme Court... in parts II and III of our earlier opinion in Owen v. City of Independence, Missouri, 560 F.2d 925 (8th Cir. 1977). (Owen 1) Notwithstanding our comments in part IV of Owen 1, the district court remains free to fashion a remedy for Owen's constitutional deprivations and award appropriate relief." Owen v. City of Independence, Missouri, 623 F.2d 550, 551 (8th Cir. 1980). (Emphasis added).

In part II of its earlier opinion the 8th Circuit court quoted with approval Codd v. Velgar, supra:

> "...The remedy mandated by the due process clause of the Fourteenth Amendment is 'an opportunity to refute the charge'. 408 U.S. at 573, 92 S.Ct. at 2707. 'The purpose of such notice and hearing is to provide the person an opportunity to clear his name,' Id., n. 12." Owen v. City of Independence, Missouri, 560 F.2d 925, 935-6 (8th Cir. 1977).

There is no report of the final remedy provided by the district court, but we may only assume that such remedy was fashioned consistent with the above language as directed by the Eighth Circuit court on remand.

Hence, we see that Owen, although it shattered "good faith" sovereign immunity for local governments in

Section 1983 actions, did not create a new form of recovery for damages under Section 1983 for violations of an individual's liberty interest uncoupled with some other constitutional violation or claim.

CONCLUSION

For the reasons set forth above, Respondents respectfully urge this Court to deny the petition for a writ of certiorari.

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